



Ecology Action Centre

Ecology Action Centre Submission to Law Amendments Committee

Re. Bill 95 - An Act to Amend Chapter 25 of the Acts of 1996, the Fisheries and Coastal Resources Act, Respecting Aquaculture

April 27, 2015

Bill 95 introduces amendments to the Fisheries and Coastal Resources Act that are supposedly as a result of the Doelle-Lahey Report's prescription for a new and improved regulatory Regime for Nova Scotia. Unfortunately Bill 95 falls far short of the recommendations in the Doelle-Lahey Report. There are a few provisions in Bill 95 that reflect the advice of the Doelle-Lahey Report but there are many things missing in the bill and some recommendations where the wording of specific amendments has been significantly watered down. This needs to be corrected. Also – there are probably a lot of people who would like to have had the opportunity to speak to this committee about this bill but are not able to due to the super-fast movement of the bill through the legislative process such that they cannot be here today. This fast tracking of the bill appears to be designed to minimize public awareness and the ability of public stakeholders to review the details of the Bill and top come before Law Amendments Committee to speak to it. This is shameful. For these reasons (1. the bill is flawed and incomplete and 2. people have not been given reasonable opportunity to review or speak to the bill) we recommend that the Bill 95 be sent back for improvements and to allow more time for the public to digest and comment on the bill.

Failing that – we recommend the following changes to the legislation. In offering these we wish to remind government that the Doelle-Lahey Report provides a detailed and integrated approach to regulating aquaculture and one that was strongly supported by both industry and stakeholder groups from across the province. How changes are made are as important as what changes are made. Stakeholders other than industry have yet to be briefed on the changes or the long-term plan if there is one. One of the recommendations of the Doelle-Lahey Report, to be implemented as early as possible, was the establishment of a Regulatory Advisory Committee made up of various stakeholder representatives. This is critical and yet there nothing in the new legislation to create this important advisory body. The D-L Report emphasizes transparency, inclusiveness, regulatory excellence, protecting the environment and wild species and building of public trust. The Bill as its currently worded breaks that public trust by omitting important pieces of the D-L Report. It can be significantly improved and brought back into compliance with the D-L Report through the following amendments. Breaking the fragile trust or truce between government, industry and communities will have negative consequences not just for the relationship but for government and the long-term health of the industry. Please heed our warning—none of us want to see Salmon Wars 2, the sequel.

Please note that the black text is from Bill 95 and the red text are our suggested changes

Add to Clause : Add to Clause 2(i) “protect the environment”

Clauses 2, 3 and 19 deal with defining “veterinary medical records” and then utterly blocking them from public access – including, and to the point of, making a consequential amendment to another law - the Freedom of Information and Protection of Privacy Act - to specifically and explicitly block public access. This is unacceptable and completely counter the D-L Report’s emphasis on openness and transparency. In fact there is no recommendation in the Doelle-Lahey Report that directs prohibition of public access to “veterinary medical records. Therefore Clauses 2, 3 and 19 should be removed from the bill.

5 Chapter 25 is further amended by adding immediately after Section 43 the following Section:

43A The purpose of this Part is to

(a) recognize that aquaculture is a legitimate and valuable use of the Province's coastal resources; (Add to the sentence: “when practiced in an environmentally responsible manner” or strike. Note: This is not a D-L Report recommendation.)

(b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment; (Add the rest of the D-L Report recommendation that was striped out: “by preventing significant harm to the environment or to the continuing availability in the short, medium and longer term of unimpaired environmental services to aquaculture and to other users of those environmental services”)

(d) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture; (This is a sneaky twisting of the actual D-L Report wording and should be stricken and revised back to the recommended D-L Report amendment: “Ensuring equity, fairness and compatibility in access to, and utilization of, public water resources in the coastal zone by aquaculture and other users of the coastal zone”.)

e) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process; (Strike this and return to D-L Report language: “Ensuring that members of the public have meaningful opportunity to be informed about and to participate in the regulatory process, including early notification of proposed aquaculture operations, proposed expansions of existing sites and proposed transfer of ownership of existing sites)

(g) ensure that coastal communities derive positive social and economic benefits from aquaculture; (Strike this and return to D-L Report language: “Ensure that the people of Nova Scotia, including the residents of communities in proximity to aquaculture sites, have opportunities to receive direct and indirect economic and social benefits from the development and operation of the aquaculture industry that are proportionate to the value of the public water resources and the environmental services utilized by the aquaculture industry).

(h) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; (Strike this and return to D-L Report language: “Ensuring that aquaculture is developed and

conducted with due regard to the health, well-being and recovery of the wild Atlantic salmon population in Nova Scotia rivers as well as any endangered species that may be affected by aquaculture operations).

(i) ensure that the regulation of aquaculture contributes to the productive development of the Province's coastal resources. (-Strike this and return to D-L Report language: "Ensure that the regulation of aquaculture contributes to the productive development of Nova Scotia's coastal resources in the direction of low impact for high value".)

Also need to add to this section are the following important clauses from the D-L Report that were left out:

Add Clause (j) "Ensure that aquaculture is developed and conducted to establish its compatibility with the well-being and prosperity of other sectors of the Nova Scotia economy, including the lobster fishery, the tourism industry and the fly-fishing industry."

Add Clause (k) "Ensuring that the regulation of aquaculture is attentive to the developmental plans, objectives, needs and priorities of local communities."

Add Clause (L) "Ensure that the regulation of aquaculture supports the efforts of the Nova Scotia aquaculture industry to develop and grow through innovation and through the adoption of aquaculture and business practices that combine business success with higher environmental performance."

Add Clause (m) "Ensure that the regulation of aquaculture in Nova Scotia is efficient, timely, dependable, predictable and affordable for both taxpayers and businesses."

Note: The following direction appears in the D-L Report right after the proposed amendments above and is meant to provide guidance on implementation.

"The underlying concept of the regulatory framework should be that strong regulations make for a stronger industry. (It) should be interpreted and applied to mean that the industry should be regulated on the basis that Nova Scotia's objective is to host an industry that creates the highest-value products with the lowest possible environmental impact, while maximizing social value. Put somewhat differently in the context of our mandate to recommend a world-class regulatory framework, the ultimate regulatory goal is for the regulatory framework to contribute to and support Nova Scotia's development as a world leader in low-impact aquaculture and to market this success so that Nova Scotia exports can achieve the highest possible value in the marketplace. These objectives should apply to all forms of aquaculture, and they should guide the development, application and evolution of the regulatory system developed for the industry."

11 Chapter 25 is further amended by adding immediately after Section 54 the following Section:

54A (1) The Minister shall appoint an employee of the Department to act as Administrator and make decisions with respect to

(a) applications for aquaculture licences or aquaculture leases in designated aquacultural areas only;

- (b) applications for aquaculture licences for land-based aquaculture sites;
 - (c) applications to amend aquaculture licences or aquaculture leases except those applications referred to in clauses 49(b) and (c);
 - (d) applications to renew aquaculture licences or aquaculture leases;
 - (e) applications to assign aquaculture licences or aquaculture leases; and
 - (f) applications with respect to an aquaculture site for which the licence or lease has been revoked.
- (2) In making a decision under subsection (1), the Administrator shall follow the prescribed process.

There are far too many ministerial authorities being transferred to a staff member appointed by the minister to act on his behalf as "The Administrator". Clauses a,c,d,e,f above should be removed from this section detailing powers granted to "the Administrator" and placed instead in the proceeding section detailing the powers of the new Aquaculture Review Board. All decision making powers regarding aquaculture leases and licenses, including renewals, etc. must rest with the arms-length ARB.

14 (1) Subsection 57(1) of Chapter 25 is repealed and the following subsections substituted:

(1) Where the Minister has designated an area as an aquaculture development area, a person may apply to the Administrator for an aquaculture licence or an aquaculture lease and the Administrator may issue an aquaculture licence or aquaculture lease in the aquaculture development area on such terms and conditions as the Administrator considers necessary or advisable.

(1A) The Minister may determine when applications in aquaculture development areas may be submitted.

(2) Subsection 57(2) of Chapter 25 is amended by

(a) striking out "47 to 50" in the first line and substituting "51 and 52"; and

(b) striking out "Minister" in the last line and substituting "Administrator".

As above decision making authority on all leases and licenses, including pre-existing sites, must be placed with the arms-length ARB and not a bureaucrat. This section should be stricken with the power provision (1) moved into the list of powers of the ARB.

15 Sections 58 and 59 of Chapter 25 are repealed and the following Sections substituted:

58 (1) The Administrator may

- (a) issue aquaculture licences for land-based aquaculture sites;
 - (b) amend aquaculture licences and aquaculture leases except those applications referred to in clauses 49(b) and (c);
 - (c) renew aquaculture licences and aquaculture leases;
 - (d) approve applications to assign aquaculture licences and aquaculture leases; and
 - (e) issue in accordance with the regulations aquaculture licences and aquaculture leases with respect to aquaculture sites for which the licence or lease has been revoked.
- (2) The Administrator may assign any conditions that the Administrator considers necessary or advisable to an aquaculture licence or aquaculture lease referred to in subsection (1).

59 (1) Where an aquaculture licence or aquaculture lease has been revoked, the Administrator may

- (a) maintain use and activity information related to the aquaculture site on the aquaculture registry for a prescribed period; or
- (b) remove use and activity information related to the aquaculture site from the aquaculture registry.

(2) A person may apply to the Administrator in the prescribed manner for an aquaculture licence or aquaculture lease to a site for which the licence or lease has been revoked.

59A An aquaculture licence or aquaculture lease issued pursuant to this Part may be revoked by the Administrator if

- (a) the holder is in breach of this Part, the regulations or any term or condition of the licence or lease;
- (b) in the opinion of the Administrator, the aquaculture activities authorized by the licence or lease are detrimental to or interfere with previously licensed or leased aquaculture sites;
- (c) the holder is found by a court of competent jurisdiction to be in violation of any law of the Province or of the Parliament or Government of Canada relating to fishery activities; or
- (d) the holder requests revocation of the licence or lease.

As above decision making authority on all leases and licenses, including pre-existing sites, must be placed with the arms-length ARB and not a bureaucrat. This section should be stricken with the power provision (1) moved into the list of powers of the ARB.

The following are specific recommendations from the Doelle-Lahey Report which are missing from Bill 95. We ask that they be inserted into the bill before the Bill is passed.

From D-L Report (Summary - pg viii):

“There will be a pervasive emphasis on openness and transparency, both in the licensing and leasing process and in the monitoring of compliance by licensed operations and the enforcement of regulations.”

“The health and well-being of farmed fish will become a central concern of the regulatory process and a core mechanism for ensuring the compatibility of aquaculture with its coastal environment.”

“The public will have multiple opportunities, including a mandatory hearing on every application for a licence, to contribute to decision making in the licensing process.”

“Salmon farms will be required to institute a comprehensive containment system to prevent escapes, such as is required in the state of Maine.”

“Compliance monitoring and enforcement will be strengthened in multiple ways, including by

- o increasing the monitoring and enforcement staff and other resources
- o unscheduled inspections
- o targeting oversight to higher risk operations
- o penalizing violations with prosecutions and licence and lease revocation where warranted”

“A standing Regulatory Advisory Committee – which includes Mi’kmaw representatives and stakeholders such as coastal communities, municipalities, the aquaculture industry and environmental organizations – will be created to provide ongoing advice on the implementation of the regulatory framework and the continuing improvement of regulation in the face of new and changing conditions, challenges, opportunities and learning.”

(In section 48?) Add: “The minister shall appoint a standing Regulatory Advisory Committee including Mi’kmaw representatives and stakeholders such as coastal communities, municipalities, the aquaculture industry and environmental organizations –to provide ongoing advice on the implementation of the regulatory framework and the continuing improvement of regulation in the face of new and changing conditions, challenges, opportunities and learning.”

(In section 48?) Add: “The minister shall appoint an independent Scientific Advisory Panel to provide scientific expertise and advise to the minister with respect to Aquaculture.”

Under Section 64 (Regulations), insert the following clauses under (1) “The Governor in Council may make regulations”

- for protection of the aquatic and coastal environment.
- for the health and well being of farmed fish
- for openness and transparency, both in the licensing and leasing process and in the monitoring of compliance by licensed operations
- for the obligation of aquaculture operations to maintainoxic conditions
- for comprehensive containment systems to prevent escapes in aquaculture operations
- for the use of chemicals and other deleterious substances
- for compliance with Environmental Monitoring Programs